

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.07.2021

PRONOUNCED ON :18.08.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

Review Application Nos. 88 and 89 of 2021

1. K.Umar Khan
2. U.Amjath Khar

... Petitioners in
both cases

Vs.

K.Akbar Ali

... Respondent in
both cases

Prayer :- Review applications have been filed to review the order dated 11.02.2021 passed in C.R.P.Nos.4630 & 4629 of 2015 respectively.

For Petitioners

in both cases : Mr.K.Chandrasekaran

For Respondent

in both cases : Mr.M.Balasubramanian

COMMON ORDER

The present review applications have been filed seeking to review the order dated 11.02.2021 passed by this Court in C.R.P.Nos.4629 & 4630 of 2015, confirming the order passed by the Courts belows, thereby dismissing the petitions for eviction and fixation of fair rent respectively.

2. The petitioners are the landlords and the respondent is the tenant. The petitioners filed petitions for eviction and also for fixation of fair rent in R.C.O.P.Nos.1802 of 2011 and 2052 of 2012 respectively, and the same were dismissed by the learned XII Judge, Small Causes Court, Chennai, by an order dated 09.12.2013. Aggrieved by the same, the petitioners filed appeals before the learned VII Judge, Small Causes Court, Chennai, in R.C.A.Nos.52 & 53 of 2014 respectively, and the same were also dismissed by an order dated 31.07.2015. As against the said order, the petitioners filed Civil Revision Petitions before this Court in C.R.P.Nos.4629 & 4630 of 2015 and this Court by an order dated 11.02.2021 dismissed both the revision petitions, confirming the order passed by the Courts below. Now the petitioners have come forward with the present Review Applications to review the order dated 11.02.2021 passed by this Court.

3. The learned counsel appearing for the petitioners would submit that in spite of the pendency of the Special Leave Petition in S.L.P.No.31844 of 2018 on the file of the Hon'ble Supreme Court of India,

this Court can very well decide the case on merits, according to the oral and documentary evidence. In the above said Special Leave Petition, the Hon'ble Supreme Court of India did not grant any stay on Civil Revision Petitions. This Court pronounced order in both Civil Revision Petitions on 11.02.2021, on sole ground that the Special Leave Petition is pending before the Hon'ble Supreme Court of India. He further submitted that the S.L.P.No.31844 of 2018 filed by the respondent was dismissed by the Hon'ble Supreme Court of India by an order dated 12.02.2021 by holding that the provisions of Order VII Rule 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court. This Court dismissed the Civil Revision Petitions on 11.02.2021 and the Hon'ble Supreme Court of India passed order on 12.02.2021 one day prior to the order passed by the Hon'ble Supreme Court. Therefore, the review petition is maintainable as per the dictum laid down by the Hon'ble Supreme Court of India in the case of ***BCCI and anr Vs. Nethaji Cricket Club & ors*** reported in ***2005 (4) SCC 741***. Therefore, he prayed to review the order passed by this Court dated 11.02.2021 in both the Civil Revision Petitions.

4. Per contra, the learned counsel appearing for the respondent would submit that this Court dismissed the Civil Revision Petitions not only on the ground that the Special Leave Petition is pending on the file of the Supreme Court of India, but also dismissed the same on merits. Therefore, there is absolutely no error apparent on the face of record and the review applications itself are not maintainable and liable to be dismissed. He further submitted that the order 47 Rule 1 (ii) of CPC., explained that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment. He further submitted that admittedly, in the case on hand, this Court passed orders in both Civil Revision Petitions on 11.02.2021 and the Hon'ble Supreme Court of India passed order in S.L.P.No.31844 of 2018 on 12.02.2021. Therefore the subsequent event shall not be a ground for filing the review application. In support of his contention, he relied upon the judgment reported in **2002 (4) CTC 663** in the case of **Jayaraman & anr Vs. Union of India and anr.**

5. Heard Mr.K.Chandrasekaran, learned counsel appearing for the petitioners and Mr.M.Balasubramanian, learned counsel appearing for the respondent.

6. Both the review petitions have been filed to review the order passed by this Court in C.R.P.Nos.4629 & 4630 of 2015 on 11.02.2021. The Civil Revision Petitions have been filed as against the order dated 31.07.2015 made in RCA.Nos.52 & 53 of 2014 respectively, on the file of the VII Small Causes Court, Chennai, confirming the order dated 09.12.2013 made in R.C.O.P.Nos. 1802 of 2011 and 2052 of 2012 respectively on the file of the XII Small Causes Court, Chennai, thereby dismissing the petition for eviction and also the petition for fixation of fair rent. The learned Rent Controller dismissed the petitions that there is no relationship of landlords and tenant between the petitioners and respondent.

7. In the year 1987, the respondent was inducted as tenant by the agreement for lease on 01.10.1987 for the period of five years. Due to fire accident, the entire building was totally destroyed and the respondent

entered into an agreement for construction of building and also with a pre-emption clause of the said agreement and the respondent paid more than Rs.29 lakhs to the petitioners' vendor. In the meantime, the petitioners herein purchased the petition premises. Therefore, the respondent filed suit in C.S.No.825 of 2010 before this Court, on the strength of the said agreement, as against the petitioners and their vendor, for declaration declaring that the sale deed is sham and nominal and not binding on the respondent. In said suit, the petitioners filed petition for rejection of plaint and the same was allowed by the Hon'ble division Bench of this Court. Aggrieved by the same, the respondent filed the Special Leave Petition before the Hon'ble Supreme Court of India in S.L.P.No.31844 of 2018.

8. This Court dismissed both the Civil Revision Petitions filed by the petitioners on the ground that when there is a dispute in respect of the ownership of the petition premises, the learned Rent Controller cannot grant order of eviction on the ground of willful default and denial of title. Only after disposal of the civil dispute with regards to title, the learned Rent Controller can decide the issue of eviction. That apart the petitioners failed

to prove the relationship of landlord and tenant between the petitioners and the respondents.

9. Now the petitioners filed this present review petitions on the ground that this Court dismissed the Civil Revision Petitions for the reason that the S.L.P.No.31844 of 2018 still pending on the file of the Hon'ble Supreme Court of India. But the same was dismissed on 12.02.2021. In this regard, the learned counsel appearing for the respondent relied upon the judgement reported in **2002 (4) CTC 663** in the case of **Jayaraman & anr Vs. Union of India and anr.**, in which the Hon'ble Division Bench of this Court held that the review can be filed, if there is apparent error on face of record. Review proceedings are not by way of appeal and error which is not self evident but has to be detected by process of reasoning is not error apparent on face of record. सत्यमेव जयते

10. Further held that subsequent change in law are not the ground for review and the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC.

Under Order 47 Rule 1 of CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the Court to exercise its power of review under Order 47 Rule 1 of CPC. It is not permissible for erroneous decision to be reheard and corrected. A review petition, it must be remembered, has a limited purpose and cannot be allowed to be an appeal in disguise.

11. That apart, the explanation in Sub clause (ii) of Rule 1, under Order 47 of CPC is very clear that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment. Therefore, subsequent changes cannot be the error apparent on the face of record. It is an appeal in the disguise and therefore, such an appeal under the guise of a Review Application, to rehear and correct the judgment already delivered by this Court cannot be entertained.

12. The learned counsel appearing for the petitioners relied upon the judgment reported in **2005 (4) SCC 741** in the case of **BCCI and anr Vs. Nethaji Cricket Club & ors.**, in which, the Hon'ble Supreme Court of India held as follows :-

“89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a

misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

In the above judgement the Hon'ble Supreme Court of India held that review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

13. As stated supra, in the case on hand, this Court dismissed the Civil Revision Petitions not only on the ground that the Special Leave Petition in S.L.P.No.31844 of 2018 is pending on the file of the Hon'ble Supreme Court of India, but also on the other grounds such as the petitioners failed to prove the jural relationship of landlord and tenant between the petitioners and the respondent. That apart the above judgment is arising out of different set of fact and as such the above judgment is not helpful to the case on hand. Hence, there is absolutely no error apparent on the face of records. The error which is not self evident but has to be detected

by process of reasoning is not error apparent face on record as such, the present review applications are not maintainable and liable to be dismissed.

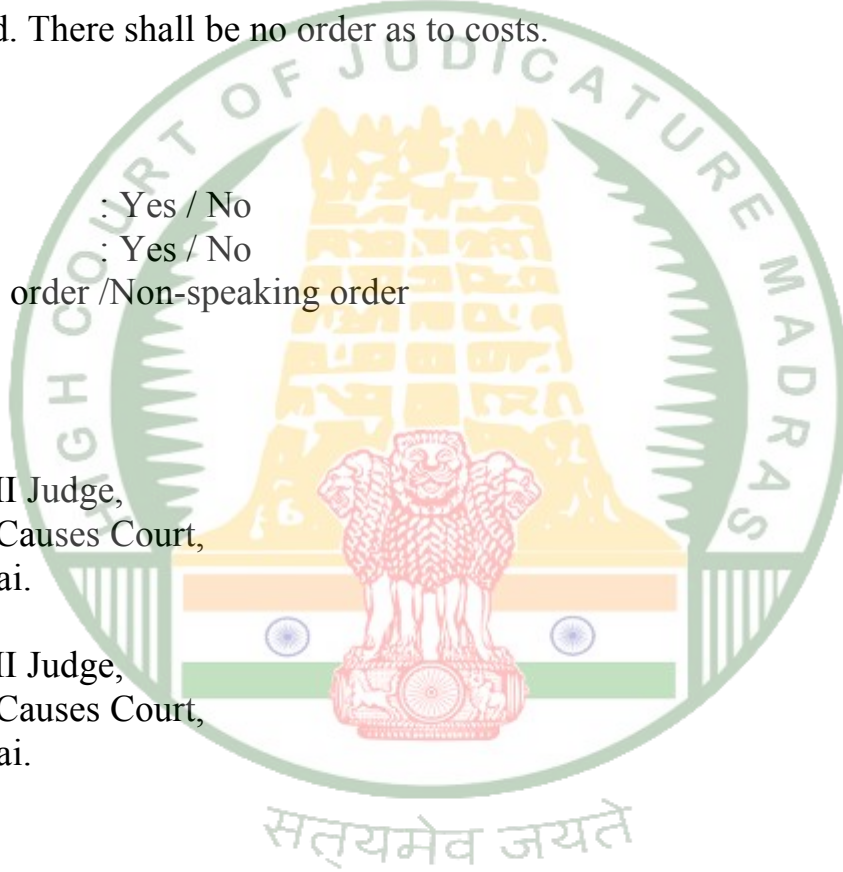
14. In view of the foregoing reasons, the Review Applications are dismissed. There shall be no order as to costs.

18.08.2021

Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order

rts
To

1. The XII Judge,
Small Causes Court,
Chennai.
2. The VII Judge,
Small Causes Court,
Chennai.



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Rev.Appl.Nos.88 & 89 of 2021

G.K.ILANTHIRAIYAN, J.

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order in
Review Application Nos.
88 and 89 of 2021

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